

Message Text

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ORIGIN CPR-01

INFO OCT-01 ARA-10 ISO-00 L-03 H-01 /016 R

DRAFTED BY S/CPR:HDAVIS:DPW

APPROVED BY S/CPR:HDAVIS

L/M - MR. MALMBORG

-----022558 121647Z /46

R 121546Z JUL 77

FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA

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E.O. 11652:N/A

TAGS:PDIP, BR, US

SUBJECT:WAIVER OF IMMUNITY CASE

REF: (A) BRASILIA 5222, (B) STATE 141350

1. BRASILIA'S RESPONSE TO DEPARTMENT'S REQUEST VIA BRAZIL-
IAN EMBASSY FOR WAIVER OF GARCIA'S IMMUNITY WAS BASED ON
FALSE IMPRESSION SHE IS MEMBER OF ADMINISTRATIVE AND TECHNICAL
STAFF AND WAIVER IS THEREFORE NOT NECESSARY. CONCLUSION
WAS ALSO ERRONEOUS IN THAT UNDER US IMMUNITY STATUTE ENACTED
IN 1790 SHE WOULD ENJOY PERSONAL IMMUNITY FROM CIVIL ACTION
EVEN IN THAT PERSONNEL CATEGORY.

2. DEPARTMENT PROMPTLY CALLED EMBASSY'S ATTENTION TO GARCIA'S
STATUS AS ATTACHE ON DIPLOMATIC LIST, AND DCM DINIZ STATES HE IN
TURN REFERRED CASE BACK TO FOREIGN MINISTRY JUNE 30 WITH REQUEST
FOR REVIEW ON BASIS CORRECT SET OF FACTS. NO REPLY AS YET.

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3. CONTRACT PURCHASER IS CONVINCED OF SOUNDNESS HIS LEGAL
POSITION AND WISHES DEPARTMENT ENTER COURT CASE ON HIS SIDE.
THIS DEPARTMENT WILL NOT DO, BUT THERE IS ARGUABLE MERIT TO
EILENBERG'S CONTENTION THAT GARCIA'S PERSONAL IMMUNITY IS NO
BAR TO IN REM JURISDICTION AGAINST THE REAL ESTATE. THUS,

WHILE HE MIGHT NOT BE ABLE TO GAIN TITLE AND POSSESSION AT

THIS TIME, CONCEIVABLY HE COULD TIE UP PROPERTY TO PREVENT SALE TO ANYONE ELSE.

4. EMBASSY REQUESTED TO RAISE MATTER WITH GOB AGAIN TO SEEK WAIVER OF IMMUNITY IN LIGHT OF ABOVE CLARIFICATION OF LEGAL SITUATION. IF THIS REFUSED ON GROUND OUR PECULIAR STATUTE CREATES THE PROBLEM, FOREIGN OFFICE SHOULD BE URGED TO PRESS GARCIA TO HONOR CONTRACT OBLIGATION. THIS ALSO WOULD AVOID ACRIMONIOUS COURT ACTION.

5. EARLY ACTION AND REPORT REQUESTED. VANCE

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Message Attributes

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Sent Date: 12-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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